



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

March 4, 2009

REGISTERED MAIL
RB 252 945 837 US

Aspen Across the Street, LLC
ATTN: Mr. Richard Kramer
14010-A NE 3rd Street, Suite 106
Vancouver, WA 98685

RE: Administrative Order No. 6449 to permanently fill 4.69 acres of isolated wetlands to construct a highway commercial/retail center called I-205 Commerce Park in Vancouver, Clark County, Washington.

Dear Mr. Kramer:

The Department of Ecology (Ecology) received your Joint Aquatic Resources Permit Application on January 16, 2008, requesting an Administrative Order for proposed work in isolated wetlands. Ecology has determined that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Chapter 90.48 RCW and other applicable requirements of state law.

This approval is subject to the conditions contained in the enclosed Order. If you have any questions, please contact Mark Cline at (360) 407-7273. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Perry J. Lund, Unit Manager
Shorelands and Environmental Assistance Program
Southwest Regional Office

PL:MC:dn
Enclosure

cc: Kristina Tong, U.S. Army Corps of Engineers
Steve Gagnon, U.S. Army Corps of Engineers
Jim Barnes, Cascadia Ecological Services
Brent Davis, City of Vancouver

e-cc: ECY RE FED PERMITS
Jessica Moore, Ecology Headquarters
Lori Ochoa, Ecology SWRO
Loree' Randall, Ecology Headquarters
Mark Cline, Ecology SWRO
Deborah Cornett, Ecology SWRO



DEPARTMENT OF ECOLOGY

IN THE MATTER OF THE REQUEST BY) ORDER NO. 6449
Aspen Across the Street, LLC)
ATTN: Mr. Richard Kramer)
FOR AN ADMINISTRATIVE ORDER TO)
CONDUCT WORK IN AN ISOLATED WETLAND)

To: Aspen Across the Street, LLC
ATTN: Mr. Richard Kramer
14010-A NE 3rd Street, Suite 106
Vancouver, WA 98685

This is an Administrative Order requiring Aspen Across the Street (Aspen) to comply with Chapter 90.48 RCW and the rules and regulations of the Department of Ecology (Ecology) by taking certain actions which are described below. RCW 90.48.120(1) authorizes Ecology to issue Administrative Orders requiring compliance whenever it determines that a person has violated or creates a substantial potential to violate any provision of Chapter 90.48 RCW.

Ecology received Aspen's Joint Aquatic Resources Permit Application (JARPA) on January 16, 2008, requesting an Administrative Order to impact 4.69 acres of isolated wetlands to construct the I-205 Commerce Park project on a 45-acre site in Clark County. The site is located on the north side of NE 88th Street, Vancouver, Clark County, Washington; Section 06, Township 02 North, Range 02 East, WRIA 28, Salmon Creek Watershed.

This Administrative Order authorizes 4.69 acres of isolated wetland impacts at the project location. Mitigation for project impacts will consist of:

Onsite

- Mitigation Area #1 (8.16 acres) Mature Forested Upland/Wetland Preservation
- Mitigation Area #2 (1.1 acres) Wetland Re-Establishment
- Mitigation Area #3 (4,722 sf) 50-Foot-Wide Habitat Corridor

Offsite

- Mitigation Area #4 (5.0 acres) Wetland Enhancement
- Mitigation Area #5 (5.2 acres) Wetland Creation

For purposes of this Order, the term "Applicant" shall mean Aspen Across the Street and its agents, assigns, and contractors.

In view of the foregoing and in accordance with RCW 90.48.120(1):

IT IS ORDERED that the Applicant shall comply with the following:

A. General Conditions:

1. The Applicant shall construct and operate the project in a manner consistent with the project description contained in the JARPA received by Ecology on January 16, 2008, or as otherwise approved by Ecology.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Southwest Regional Office, Attn: Federal Permit Coordinator, SEA Program, P.O. Box 47775, Olympia, WA 98504-7775. Any submittals shall reference Order No. 6449 and Corps No. NWS-2003-00-412.
3. The Applicant shall provide access to the project site and mitigation site upon request by Ecology.
4. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and foremen, and state and local government inspectors.
5. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public interest.
6. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project.

B. Notification Requirements:

1. The Applicant shall provide written notification (FAX, e-mail or mail) to Ecology's Southwest Regional Office Federal Permit Coordinator in accordance with condition A.2 above for the following activities:
 - a. At least ten (10) days prior to a pre-construction meeting
 - b. At least ten (10) days prior to the onset of any work on site
 - c. At least ten (10) days prior to the onset of in-water work, including wetlands
 - d. At least ten (10) days prior to the onset of work at the wetland mitigation site
 - e. Immediately following a violation of the state water quality standards or any condition of this Order
 - f. Within fourteen (14) days after completion of construction

C. Wetland Compensatory Mitigation Conditions:

1. The Applicant shall mitigate wetland impacts as described in the plan entitled *I-205 Commerce Park Compensatory Wetland Mitigation Plan* dated February 2, 2009, except as modified in this Order or revised and approved by Ecology.
2. The Applicant shall incorporate the stormwater best management practices described in the memo transmitted via email message from Jim Barnes to Mark Cline dated February 3, 2009.
3. The Applicant shall submit any changes to the mitigation plan in writing to Ecology (per condition A.2. above) for review and approval before work begins or when problems occur during construction requiring plan changes.
4. To ensure proper installation, the Applicant's wetland professional must supervise and inspect all mitigation site construction and planting.

Implementation

5. The Applicant shall begin the compensatory mitigation project before or concurrent with impacting wetlands. Ecology may require additional compensation to account for additional temporal loss if the mitigation is not completed in a timely manner.
6. The Applicant shall ensure that all excess excavated site material is disposed of in an appropriate location outside of wetlands and their buffers and above the 100-year floodplain.
7. If seeding is used as a temporary erosion control BMP, it must be a wetland mix consisting of native, annual, non-invasive plant species.
8. The Applicant shall place signs at the mitigation area's boundaries, including buffers, to clearly mark the area as wetland mitigation.
9. Upon completion of site-grading and prior to planting, the Applicant shall submit to Ecology written confirmation that the finished grades are consistent with the approved mitigation plan or subsequent Ecology-approved plan changes. Written confirmation can be a signed letter from the surveyor or project engineer indicating how final elevations were confirmed and whether they are consistent with the plan.
10. Within ninety (90) days of completing site construction and planting, the Applicant shall submit a final as-built report with maps to Ecology. The As-Built report must:
 - a. Document site conditions at Year Zero;
 - b. Be submitted to Ecology per Condition A.2. of this Order as one hard copy and one electronic file;
 - c. Include the information listed in Attachment B;
 - d. Include documentation of a Recorded Wetlands Notice.

11. If the mitigation project is not completed within 13 months of this Order's date, the Applicant shall submit a written construction status report and submit status reports every 12 months until construction and planting are complete and the final as-built report is submitted.
12. Within ninety (90) days of completing construction and planting, the Applicant shall record a Wetlands Notice (see Attachment C), a copy of Ecology's Order, and the as-built report. These documents must be recorded with the County Recording Office, Registrar of Deeds, or other official responsible for maintaining records for, or interest in, real property.

Monitoring and Maintenance:

13. The Applicant shall water and maintain all plantings at the mitigation site to meet the mitigation plan's performance standards.
14. The Applicant shall monitor the mitigation site for a minimum of ten (10) years as described in the mitigation plan. Additional monitoring of the mitigation area may be required by Ecology if wetland monitoring reveals that performance measures are not being met.
15. The Applicant shall submit monitoring reports (one hard copy file and one electronic file per Condition A.2. of this Order) to Ecology documenting site conditions at the mitigation site for the years listed in the mitigation plan, and the reports must contain, at a minimum, the information listed in Attachment D.
16. The Applicant shall implement the mitigation plan's contingency measures if goals, objectives, and performance standards are not being met.
17. Prior to implementing any unidentified contingency measures, the Applicant shall consult with Ecology.
18. When necessary to meet the performance standards, the Applicant shall replace dead or dying plants with the same species, or a native plant alternative appropriate for the location, during the first available planting season and note the species, numbers, and approximate locations of all replanted materials in the subsequent monitoring report.
19. The property owner shall grant Ecology access to the mitigation area for inspection during the 10 year monitoring period or until mitigation success has been achieved.

Failure to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals Coordinator
PO Box 47608
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

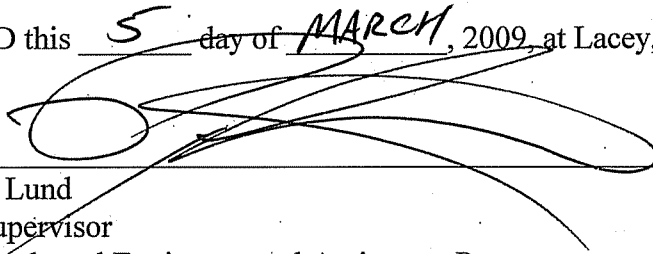
Mark Cline
Department of Ecology
Southwest Regional Office
PO Box 47775
Olympia, WA 98504-7775

*For additional information visit the Environmental Hearings Office Website:
<http://www.eho.wa.gov>*

*To find laws and agency rules visit the Washington State Legislature Website:
<http://www1.leg.wa.gov/CodeReviser>*

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

DATED this 5 day of MARCH, 2009, at Lacey, Washington.



Perry J Lund
Unit Supervisor
Shorelands and Environmental Assistance Program
Southwest Regional Office

Attachment A
Statement of Understanding
(See Condition A. 6.)

Aspen Across the Street, LLC
I-205 Commerce Park Project
Administrative Order # 6449
And
Corps No. NWS-2003-00-412

I, _____, state that, I will be involved as an agent or contractor for Aspen Across the Street, LLC in the site preparation and/or construction of the I-205 Commerce Park project located on a 45-acre site on the north side of NE 88th Street, Vancouver, Clark County, Washington; Section 06, Township 02 North, Range 02 East, WRIA 28, Salmon Creek Watershed. I further state that I have read and understand the relevant conditions of the Washington Department of Ecology Administrative Order #6449 and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

Signature

Date

Title

Phone

Company

Attachment B
Information for As-built Reports
(See Condition C. 10.)

Aspen Across the Street, LLC
I-205 Commerce Park Project
Administrative Order # 6449
And
Corps No. NWS-2003-00-412

Background Information

- 1) Project name.
- 2) Ecology docket number and the Corps reference number.
- 3) Name and contact information for the parties responsible for the mitigation site including:
 - a) The applicant.
 - b) The landowner.
 - c) Wetland professional on site during construction of the compensatory mitigation site.
- 4) Name and contact information for the party responsible for preparing the report.
- 5) Who the report was prepared for (name, address, and phone number) *{if different from number 3 above.}*
- 6) Month and year the report was produced.

The Development Site

- 7) Brief description of the development project. Include:
 - a) Directions to the site.
 - b) Month and year construction of the development project started and ended.
 - c) Area (acres) and type(s) (rating category, HGM classification, and Cowardin classification) of wetlands that were **actually** impacted by the development project, including temporary impacts.

The Compensatory Mitigation Project

- 8) Brief description of the **final** compensatory mitigation project with any changes from the approved plan made during construction. Include:
 - a) Directions to the site.
 - b) Who completed the compensatory mitigation project (name, address, and phone number).
 - c) Acreage and type(s) (re-establishment, rehabilitation, creation, enhancement, and preservation) of mitigation authorized to compensate for wetland impacts.

- d) Important dates including:
 - i. Month and year the wetland impacts occurred.
 - ii. When work on the compensatory mitigation site began and ended.
 - iii. When different activities began and ended such as grading, removal of invasive plants, installing plants, and installing habitat features.
- 9) Description of any problems encountered and solutions implemented (with reasons for changes) during construction of the compensatory mitigation site.
- 10) Any changes to the goals, objectives, and performance standards of the compensatory mitigation project.
- 11) List of any follow-up actions needed, with a schedule.
- 12) Final site maps (8 1/2" x 11" or larger) of the compensatory mitigation site(s) including the following (at a minimum):
 - a) Geographic location of the site with landmarks;
 - b) Clear delineation of the project perimeter(s);
 - c) Topography (with a description of how elevations were determined),;
 - d) Installed planting scheme (quantities, densities, sizes, and approximate locations of plants, as well as the source(s) of plant material);
 - e) Location of habitat features;
 - f) Location of permanent photo stations.

The final site maps should reflect on-the-ground conditions after the site work is completed. Include the month and year when the maps were produced and, if applicable, when information was collected.
- 13) Photographs of the site at as-built conditions taken from permanent photo stations. We recommend photo pans.
- 14) Copies of any records of deed notification or conservation easements.

Attachment C
Wetland Notice for Deed Notification
(See Condition C.12.)

Aspen Across the Street, LLC
I-205 Commerce Park Project
Administrative Order # 6449
And
Corps No. NWS-2003-00-412

Tax Parcel Number: _____

Legal Description: _____

Legal Owner: _____

NOTICE: This property contains wetlands as defined by Chapter 36.70A030(20) RCW, Chapter 90.58.030 (2)(h) RCW and WAC 173-201A-020. The property was the subject of an Ecology action under Chapter 90.48.260 RCW or Chapter 90.48.120(1) RCW.

_____, issued on _____, 20____
(Corps federal reference #) Ecology Docket #

to _____ for _____
(Applicant Name) (Project Name)

Restrictions on use or alteration of the wetlands may exist due to natural conditions of the property and resulting regulations. A copy of Ecology's Order and the site map from the final wetland mitigation plan indicating the location of wetlands and their buffers is attached hereto.

EXECUTED this _____ day of _____, 20____.

State of Washington)
County of _____)

I certify that I know or have satisfactory evidence that _____
Signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in this instrument.

GIVEN under my hand an official seal this _____ day of _____, 20____.

NOTARY PUBLIC in and for the state of Washington,
residing at

_____. (Amended by Ord. 11200 § 50 (part), 1996)

Attachment D
Required Information for Monitoring Reports
(See Condition C.15.)

Aspen Across the Street, LLC
I-205 Commerce Park Project
Administrative Order # 6449
And
Corps No. NWS-2003-00-412

Ecology requires the following information, for monitoring reports submitted under this Order. Ecology will accept additional information that may be required by other regulators.

Background Information

- 1) Project name
- 2) Ecology docket number and Corps reference number
- 3) Name and contact information of the parties responsible for the mitigation site including:
 - a) The applicant
 - b) The landowner
- 4) Name and contact information for the party responsible for the monitoring activities and report
- 5) Who the report was prepared for (name, address, and phone number) *{if different from number 3 above.}*
- 6) Month and year the monitoring data were collected
- 7) Month and year the report was produced

Mitigation Project Information

- 8) Brief description of the mitigation project including:
 - a) Directions to the site
 - b) Acreage and type(s) (re-establishment, rehabilitation, creation, enhancement, and preservation) of mitigation authorized to compensate for wetland impacts
- 9) Brief description of monitoring approach and methods.
- 10) A list of the goals and objectives for the mitigation project
- 11) Summary table of monitoring data compared with performance standards. Using the monitoring data, describe how the site is developing toward goals and objectives and whether the project is in compliance with performance standards
- 12) Summary (including dates) of management actions (maintenance, contingencies, and corrective actions) implemented at the site(s)
- 13) Summary of any difficulties or significant events that occurred on the site that may affect the ultimate success of the project

- 14) Specific recommendations for any additional corrective actions or adaptive management with a time table
- 15) Summary of any lessons learned
- 16) Site maps (8 1/2" x 11" or larger) of the compensatory mitigation site(s) including the following (at a minimum):
 - a) The month and year when the maps were produced and, if applicable, when information was collected
 - b) The geographic location of the site with landmarks.
 - c) Clear delineation of the project perimeter(s).
 - d) Species, numbers, and approximate locations of all replanted material vegetation.
 - e) Location of habitat features.
 - f) Location of permanent photo stations and location of any other photos.
 - g) Location of sampling points or transects.
- 17) Photographs taken at permanent photo stations (and other photographs as needed) from the most recent monitoring visit, which are dated and clearly indicate the direction from which the photo was taken. We recommend photo pans.